

FILED
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U.S. DISTRICT COURT E.D.N.Y.

★ OCT 28 2015 ★

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LONG ISLAND OFFICE
PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

CV 15 6283

United States District Court		District Eastern
Name (under which you were convicted): DANNY BARRERA		Docket or Case No.: 13111/15
Place of Confinement: Nassau County Correction Center		Prisoner No.: 15003944
Petitioner (include the name under which you were convicted) Respondent (authorized person having custody of petitioner) <div style="text-align: center;">v.</div> Danny Barrera Ein# 453570812 NEW YORK STATE		
The Attorney General of the State of <div style="text-align: center;">NEW YORK</div>		

BIANCO, J.

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: _____
Nassau county criminal court, Hempstead New York
99 main street Hempstead, New York 11550
- (b) Criminal docket or case number (if you know): _____ dk#13111/15
2. (a) Date of the judgment of conviction (if you know): _____ n/a
- (b) Date of sentencing: _____ n/a
3. Length of sentence: _____ n/a
4. In this case, were you convicted on more than one count or of more than one crime? Yes ☐ No ☒
5. Identify all crimes of which you were convicted and sentenced in this case: I am not being
granted due process. Therefore I am still in custody. Code of Federal
Regulation chapter 27, section 72.11 state all crimes are commercial. If
that is the case then I am being unlawfully detained for a civil matter. And
it's been several months now. There is no claiming witness or injured party!
6. (a) What was your plea? (Check one)

(1) Not guilty ☒
 (2) Guilty ☐

(3) Nolo contendere (no contest) ☐
 (4) Insanity plea ☐

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/a

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☐ Judge only ☐

7. Did you testify at either a pretrial hearing, trial or a post-trial hearing?

Yes ☐ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☐

9. If you did appeal, answer the following:

(a) Name of court: N/a

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you seek further review by a higher state court? Yes ☐ No ☐

If yes, answer the following:

(1) Name of court: N/a

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☐

If yes, answer the following:

(1) Docket or case number (if you know): N/a

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☐ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____ N/a _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____ N/a _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: N/a

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(3) Third petition: Yes ☐ No ☒

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: I did not file with the state because they have no

jurisdiction over subject matter., they have no jurisdiction because of the commerce clause Us Con art1 sec8 cl3

I am from the State of N.J. & my tax returns can prove it.

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: The Constitution of the U.S. is the Supreme Law of the Land & under article § 8 cl 3 which is the Commerce clause prevents State regulation.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): During the time of the alleged event of the [crimes] I am being charged with which are commercial [crimes] (C.F.R. 72.11) I was unlawfully detained by sheriffs of the Lynbrook sheriffs department. I invoked Federal Law to the sheriffs which only served to make them angry. They unlawfully seized the vehicle I was operating which contained all the tools of my trade. I am a certified Automotive technician & I was contracted by a third party to fix the vehicle that was unlawfully seized. (Unconstitutional) in hopes of finding guns or drugs probably because I was racially profiled. But I am not a criminal and they found nothing!

(b) If you did not exhaust your state remedies on Ground One, explain why: The state does not have jurisdiction over interstate commerce. The State lacks subject matter jurisdiction. Federal Rules of Civil Procedure 12(b)(1) And lack of personal jurisdiction FRCP 12(b)(2) and FRCP 12(b)(6)

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Docket or case number (if you know):

N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(c) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

N/A

GROUND FOUR: USC title 18 part 1 chapter 13 § 242 Deprivation of Rights under color of Law. Violation of the 4th Amendment of the United States Constitution & 5th Amend.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): I sustained injuries due to the excessive force of my unlawful arrest & I was hospitalized as a result. Police officer Murphy shield # 1032 as well as others from the Lynbrook police department performed a warrantless search & seizure of the vehicle I was operating which caused major damage to the vehicle. My tools are my livelihood & without them I can not engage in commerce. I have been in custody in Nassau County Correctional

Center for several months & I have been deprived a Speedy Trial. Also some legal mail & paperwork was confiscated from me which is holding up my due process.

(b) If you did not exhaust your state remedies on Ground Four, explain why: Because of ineffective counsel which is a lack of due process. The prosecutor has offered time served but out of Moral principal I must stand my ground & not plea guilty. Want of consideration is always a defense under MCC section 3-408. It is unconscionable to force someone to contract under Threat, coercion, or duress. And

(c) **Direct Appeal of Ground Four:** Since I am unlawfully incarcerated for a civil matter, this meets the criteria.

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☒

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: N/A

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☐ No ☒

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

Because of ineffective counsel which is a lack of due process. The State has offered me time served but out of moral principal I will not say I am guilty of Anything!

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: N/A

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinions or orders, if available. N/A

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Honorable Joseph F. Bianco
United States District Judge
100 Federal Plaza
Central Islip, NY 11722-9014

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